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No. .....

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In The

Supreme Court of the United States

October Term, 1980

Edward Curley

Petitioner.

v.

Johanna H. Curley

Respondent.

Petition for Writ of Certiorari
To The New Jersey
Superior Court Appellate Division

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION I

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 4th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND CONTINUES TO BE VIOLATED.

QUESTION II

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 13th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND IS BEING VIOLATED.

QUESTION III

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 14th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND IS BEING VIOLATED.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Edward Curley, respectfully prays that a writ of certiorari issue to review the judgement of the New Jersey Superior Court Appellate Division entered in this proceeding on December 29, 1980 for which a petition for certification was denied by the Supreme Court of New Jersey March 9, 1981.

OPINIONS BELOW

The opinion of the New Jersey Superior Court Appellate Division entered on December 29, 1980 appears in the Appendix at p. A-1. The denial of the Supreme Court of New Jersey of petition for certification on March 9, 1981 appears in the Appendix at p. A-5.

JURISDICTION

The New Jersey Superior Court Appellate Division entered it's judgement on December 29, 1980 and the Supreme Court of New Jersey denied petition for certification despite the merits of constitutional issues involved. Petitioner invokes this Court's jurisdiction under the Constitution of the United States. Further, petitioner invokes this Court's jurisdiction under Title 28 U.S.C. Secs. 1331 and 1332 since the matter in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand Dollars ($10,000.00). The petitioner is a born citizen of the United States and the respondent is a foreign national.

STATEMENT OF PROCEDURAL HISTORY

A false and malicious Complaint for Divorce (Da20) was signed March 16, 1977 and filed April 6, 1977 by the plaintiff, based on the shallowest of grounds for extreme cruelty. Docket No. M-14581-76 was assigned.

After a fruitless attempt at reconciliation by the defendant, an answer and counterclaim for divorce (Da55) was signed April 28, 1977 by the defendant on grounds of desertion and extreme cruelty by the plaintiff.

After considerable harassment and denials of equal protection under the law during pretrial litigation, a deliberately prolonged trial lasting 19 days spread over seven weeks was started on September 14, 1978 and proceeded till November 1, 1978 despite pleas by the defendant to attorneys and the court that the length of trial was affecting the defendant's career. With all facts presented, there can be no doubt that the trial was controlled and manipulated toward achieving a pre-determined decision in favor of only one individual, namely the plaintiff.

An unjust and highly discriminatory Divorce Judgement (Da1047) in violation of the best interests of the children of the

marriage and the defendant's constitutional rights under the 4th, 13th and 14th amendments as a born United States citizen was signed March 12, 1979 despite the defendant's written pleas to the Trial Judge for a re-consideration of his verbal decision of October 30 and November 1, 1978.

On November 1, 1979 under Docket No. A-2926-78, the defendant-appellant delivered a Brief (Db1 thru 62) and an Appendix (Da1 thru 1079) to the Appelate Division of the Superior Court of New Jersey, appealing from all of the Final Judgment of the Honorable James M. Havey of the Superior Court of New Jersey Chancery Division of Ocean County.

With cover letter dated December 21, 1979 (Dpa7) the attorney for the plaintiff-respondent filed a Brief (Rb1 thru 22) with the Superior Court of New Jersey Appellate Division.

On December 31, 1979 the defendant-appellant delivered a Reply Brief (Drb1 thru 18) to the Superior Court of New Jersey Appellate Division.

After denials of several motions (by the defendant-appellant) for acceleration of proceedings (originally and throughout the appeal process under the auspice of Judges

Bischoff, Botter and Greenberg) oral argument (DPa64 thru 68) was heard before Judges Botter and McElroy on November 18, 1980 in the court room of the Superior Court of New Jersey Appellate Division, part B, Essex County Courts Building, Newark, New Jersey.

An Appellate Decision dated December 29, 1980 (DPa84 thru 86 and A-1 thru 4) unjustly affirming the Trial Judges discriminatory decision was rendered by Judges Botter and McElroy despite undisputable proofs of violations of the defendant's human, civil and constitutional rights.

The defendant submitted a Petition for Certification dated January 26, 1981 (DP1 thru 8) with Appendix (DPa1 thru 99) to the Supreme Court of New Jersey for a hearing of the case of Curley vs. Curley (Docket Numbers M-14581-76 and A-2926-78) and Supreme Court of New Jersey Docket Number 18,127 was assigned.

Despite volumes of submitted documentation supporting the defendant's position, the defendant's petition for certification (DP1 thru 8) was denied by the Supreme Court of New Jersey on March 9, 1981 (A-5).

STATEMENT OF FACTS

Despite submission of a preponderance of documentation highlighting (beyond any doubt) the unjust discrimination exercised by the Trial Judge and condoned by the New Jersey Superior Court Appellate Division against the defendant in favor of the plaintiff, the New Jersey Supreme Court unjustly denied the defendant a hearing of the case of Curley vs. Curley and ended the defendant's hope of obtaining justice in the State of New Jersey.

From the outset of litigation to the present time, the defendant has been subjected to biased decisions in the Courts of New Jersey which have resulted in deliberate and gross violations of the defendant's rights under the 4th, 13th and 14th amendments to the United States Constitution. The seriousness of these violations as presented to the New Jersey Courts has been ignored and downplayed as lacking merit while malicious, frivolous unfounded actions of the plaintiff (who initiated litigation through an attorney who advocates that leaving the cap off the toothpaste is grounds for divorce) has been given undue extreme consideration and aid by the courts despite positive proof of

the plaintiff's adultery, desertion, extreme mental cruelty, physical cruelty, perjury and theft.

Discrimination against the defendant has been and still is being perpetrated with regard to Child Custody, Alimony, Child Support, Division of Assets and the Award of Legal Fees.

Custody of the children of the marriage as ordered by the Trial Judge violates the children's and the defendant's Constitutional Rights as submitted in briefs to the New Jersey Superior Court Appellate Division and the New Jersey Supreme Court. There can be no denying the violation of Rights under the 14th Amendment to the United States Constitution where the defendant was given five (5) months custody while ordered to pay child support during that custody and the plaintiff was given seven (7) months custody with an unfair high award of unneeded support monies while the defendant strove for a family status quo through purchase of the matrimonial home which the court knew, through positive proofs submitted, that the plaintiff had no intention of maintaining despite the children's desire to stay in the home. Through the unjust court order, the defendant and the children were subjected to living in the

marital home completely gutted, by the plaintiff, of all furniture and furnishings including personal items of the defendant's. At no time did the probation department or the court concern themselves with how the children were faring while in the defendant's custody.

Despite positive proofs offered throughout litigation and during trial that the plaintiff had hidden monies and was involved in doing business in competition with the defendant, the court awarded the plaintiff more than 50% of the defendant's wages and assets along with a lucrative business owned by the defendant. Ridiculously low and arbitrary figures of value were assigned to items unjustly awarded to the plaintiff by the Trial Judge.

Despite proofs providing the court with knowledge that the defendant lived up to the marital contract in every conceivable way while the plaintiff violated the marital contract with adultery, desertion, physical cruelty, mental cruelty and the hiding of assets throughout the marriage and litigation, the courts have consistently awarded legal fees to the affluent plaintiff who initiated litigation without just cause.

The injustices being enacted against the

defendant under the guise of enactment of matrimonial law are on-going. Despite positive proofs submitted to the courts that the defendant is short monies for necessary expenses while the plaintiff has an excess of monies, the defendant is presently subjected to a court order for garnishment of wages in favor of the plaintiff who operates a lucrative business (extorted from the defendant) capable of grossing in excess of $70,000.00 per year.

The defendant has exhausted reasonable pursuit of justice in the State of New Jersey through the appeal process into the New Jersey Supreme Court.

The defendant now appeals to the United States Supreme Court for a review and hearing of the case of Curley vs. Curley in the interest of justice.

REASONS FOR GRANTING THE WRIT

QUESTION I

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 4th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND CONTINUES TO BE VIOLATED.

The court allowed the plaintiff to take personal belongings of the defendant's despite written requests to the court for a return of said belongings prior to the signing of an unjust court order dated March 12, 1979 which discriminates against the defendant in favor of the plaintiff.

The New Jersey courts did not provide for or honor the defendant's rights to the protection of the ownership of personal belongings still being withheld from the defendant to this date.

QUESTION II

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 13th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND IS BEING VIOLATED.

The court has placed the defendant into

involuntary servitude to a non-citizen of the United States through the on-going award of unjustified, undeserved and unneeded alimony.

Despite positive proofs submitted to all New Jersey Courts involved, the defendant who lived up to the marital contract in every conceivable way is subjected to involuntary servitude to a wrongdoing plaintiff under the guise of New Jersey matrimonial laws being enacted.

The New Jersey matrimonial laws themselves are being violated since laws pertaining to alimony stress that alimony is based on need and not to be used as a form of punishment.

The New Jersey Courts are using and manipulating the matrimonial laws to place and retain the defendant in a condition of unjustified involuntary servitude without just cause.

QUESTION III

WHETHER THE DEFENDANT'S RIGHTS UNDER THE 14th AMENDMENT TO THE UNITED STATES CONSTITUTION HAS BEEN AND IS BEING VIOLATED.

The courts of New Jersey have discriminated against and denied the defendant equal

protection of the law in unjustly finding in favor of the plaintiff throughout litigation to the present time as follows:

1. The plaintiff while living in desertion and adultery was awarded undue, unneeded monies above and beyond normal status quo continued support by the defendant. This action by the court continued despite knowledge, through submitted proofs to the court, that the plaintiff was cavorting with a pre-divorce paramour while unduly harassing and hauling the defendant into court on such trivia as one (1) television out of five (5) not working and loose castors being a problem. The plaintiff's charges which resulted in additional harassment and time lost from work, causing serious set-back to the defendant's career, were of such ludicrous caliber that laughter was created in the court's audience. No attempt was made by the court to protect the defendant from the plaintiff's actions.

2. The defendant was subjected to a nineteen (19) day trial spread over seven (7) weeks while the trial was manipulated to favor the plaintiff and put pressure on the defendant toward achieving a discriminatory conclusion pre-dtermined by the Trial Judge and attorneys involved. Long before the

trial's completion, the plaintiff voiced confidence (to friends) that the plaintiff would be favored by the court and awarded a store (owned by the defendant) despite the plaintiff's proven competition with the business from time of plaintiff's desertion and throughout litigation. The court showed obvious bias in favor of the plaintiff.

3. During trial, false reports were submitted to the court by the Ocean County Probation Department, creating pressure on the defendant who luckily had preserved documentation combating and proving the lies entered. Documentation could not be refuted by the court due to proof of certified mailing. The defendant submits that a conspiracy was being conducted to unjustly twist facts and thereby deny the defendant equal protection of the law.

4. During trial the judge indicated obvious dis-interest in important facts being presented during the defendant's testimony and on several occasions conducted other business with his secretary over the bench while the defendant was in process of speaking. The trial was interrupted on numerous occasions over and above other cancellations and postponments, for example

on one occasion for reason such as the plaintiff's attorney being ill while in fact the said attorney was present in court conducting other legal business. The defendant was not heard or given equal consideration by the court.

5. The existing court order awards a dual divorce despite the fact that the plaintiff failed to prove the existence of any breach of the marital contract by the defendant falsely accused of extreme cruelty and despite the fact that the defendant proved to the court, adultery, desertion, physical cruelty, mental cruelty, perjury and theft by the plaintiff. The court awarded a divorce on unproven extreme cruelty to the plaintiff and a divorce on proven desertion to the defendant. Amendment of the defendant's complaint to include the plaintiff's adultery before commencement of the trial was denied by the trial judge and the cruelty charges were ignored. The defendant was denied due process of the law and the court's failure to grant a divorce solely to the defendant on genuine grounds, clearly recognizable to the court, is deviously discriminatory.

6. The existing court order awards custody of the children of the marriage for

seven (7) months to the plaintiff and five (5) months to the defendant. If the defendant is considered good enough for five (5) months custody, then why not six (6) months or full custody which is more beneficial to the children since the defendant proved to be the better parent. The defendant is obviously discriminated against for reason of sex and/or monetary gain in favor of the plaintiff.

7. The existing court order awards child support monies to the plaintiff while the defendant has custody of the children in the marital home despite the before, during and after trial affluence of the plaintiff. Despite offers of proof to the courts that the defendant has need of support monies while the plaintiff has ability to pay support, the courts continue to discriminate against the defendant and have presently unjustly garnished the defendant's salary in favor of the plaintiff while the defendant is conscientiously supporting the children of the marriage (presently in defendant's sole custody of their own volition), their grandmother of 73 (who was unjustly financially raped by court action and cannot exist on her meager social security). The defendant is discriminated against to the extent of extortion being perpetrated.

8. Despite knowledge of the plaintiff's high earning ability and non-revelation of plaintiff's assets at the time of trial, the Trial Judge awarded more than 50% of the defendant's assets and wages to the plaintiff plus the lucrative business still operated by the plaintiff. The defendant is clearly discriminated against in favor of the plaintiff.

9. Despite the plaintiff's false, malicious initiation of litigation and high award of assets, the Trial Judge and the Appellate Court of New Jersey have levied legal fees against the defendant in favor of the plaintiff. Costs were ordered against the defendant regardless of the plaintiff's ability to pay and the merits under which litigation was initiated, for example the plaintiff initiated legal action without just cause on the shallowest and most frivolous grounds and legal fees were awarded against the victim defendant. The victim defendant initiated appeal action to right obvious wrongs and legal fees were still awarded against the victim defendant. The defendant is clearly discriminated against in favor of the plaintiff.

CONCLUSION

The defendant-petitioner most respectfully requests that the Supreme Court of the United States grant a writ of certiorari to review and hear the case of Curley vs. Curley in the interest of justice.

In view of the facts presented and available proofs which highlight the violation of the defendant's rights under the 4th, 13th and 14th Amendments to the United States Constitution, the defendant most respectfully requests that the Supreme Court of the United States enforce recognition of the defendant's constitutional rights in the New Jersey Courts.

Further, the defendant most respectfully requests that the Supreme Court of the United States exercise it's power to determine and enforce the defendant's marital rights in the State of New Jersey.

Respectfully submitted,

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APPENDIX A-1

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2926-78

JOHANNA H. CURLEY,

Plaintiff-Respondent,

v.

EDWARD CURLEY,

Defendant-Appellant.

Argued November 18, 1980--Decided Dec 29, 1980 Before Judges Botter and McElroy.
On appeal from Superior Court, Chancery Division, Ocean County.
Edward Curley, appellant, argued the cause pro se.
Elmer J. Skiba argued the cause for respondent.

PER CURIAM

Defendant appeals from the final judgment of dual divorce entered in the court below. Plaintiff cross-appeals from that part of the judgment pertaining to the award of alimony. In addition, both parties requested an award from this court for costs

and counsel fees on this appeal.

Defendant contends that there was insufficient evidence to support the trial judge's grant of a divorce to plaintiff on the ground of extreme cruelty. He also contends that the trial judge should have granted his motion at the time of trial to amend his complaint to include the allegation of adultery as a basis for his counterclaim for divorce which had theretofore asserted causes of action based on plaintiff's desertion and acts of extreme cruelty. Defendant also contends that joint custody of the two children of the marriage (who are now approximately 16 and 18 years of age) should not have been ordered but defendant should have been granted exclusive custody. He also contends that the award of alimony was unjustified because of plaintiff's wrongdoing and constitutes an order of involuntary servitude against him. He also challenges the equitable distribution ordered by the trial judge as well as the award of counsel fees in favor of plaintiff.

We find defendant's contentions lacking in merit. R.2:11-3(e)(1)(A) and (E). Ample evidence supports the determinations of the trial judge. See State v. Johnson,

42 N.J. 146, 162 (1964). In addition, we find no abuse of discretion in denying defendant's motion to amend his counterclaim to add a count based upon plaintiff's alleged adultery. Moreover, we doubt that defendant was prejudiced by this ruling since the alleged fault of plaintiff would not have affected the alimony award on the facts of this case.

With respect to the other determinations of the trial court, we perceive no abuse of discretion.

Appellant's request for the assessment of legal fees and costs against plaintiff is denied. Respondent's request for counsel fees contained in her brief is not properly before us. R.2:11-4.

Plaintiff cross-appeals contending that the award of permanent alimony in the sum of $40.00 per week is inadequate. An award of $75.00 per week was made for the first 18 months following the divorce. On the record before us we cannot say that the trial judge abused his discretion with respect to alimony. The Supreme Court has recently commented favorably upon the concept of "rehabilitative alimony." Lepis v. Lepis, 83 N.J. 139, 155, n. 9 (1980).

Obviously, however, any award of this nature is subject to modification in case of changed circumstances. Id., 83 N.J. at 145-146.

Affirmed.

SUPREME COURT OF NEW JERSEY C-362 SEPTEMBER TERM 1980

JOHANNA H. CURLEY,
Plaintiff-Respondent,
v.
EDWARD CURLEY,
Defendant-Petitioner.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2926-78 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of March, 1981.

Stephen W. Townsend
Clerk

FILED
SUPREME COURT
Mar 11, 1981